

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 27, 2003

Agenda ID #2441

TO: PARTIES OF RECORD IN PETITION 02-12-039

This is the draft decision of Administrative Law Judge (ALJ) Jones. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **DRAFT DECISION OF ALJ JONES** (Mailed 6/27/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of The Greenlining Institute and Latino Issues Forum for a Commission Order Instituting Rulemaking to Amend General Order Number 77-K and to Adopt a Regulation Requiring Regulated Utilities and Their Holding Companies to Annually Disclose Their Diversity, Executive Compensation And Philanthropic Contributions Pursuant to California Public Utilities Code Section 1708.5.

Petition 02-12-039
(Filed December 27, 2002)

DECISION DENYING PETITION OF THE GREENLINING INSTITUTE AND LATINO ISSUES FORUM TO AMEND GENERAL ORDER NUMBER 77-K

Summary

This decision denies the Greenlining Institute/Latino Issues Forum's (Greenlining/LIF) petition for rulemaking to amend General Order No. 77-K (GO 77-K) because the general order already requires utilities to disclose compensation of employees, and Greenlining/LIF's request duplicates information available from other sources. Also, the information on the diversity of top executives and philanthropic contributions requested by Greenlining/LIF goes beyond the Commission's stated purpose in GO 77-K, namely to assist the Commission in setting rates.

The decision recognizes that the compensation levels that trigger reporting under GO 77-K are low and, in all likelihood, should be increased. The most expeditious way to accomplish that would be for an interested party to file a

Petition to Modify Resolution No. F-615, the resolution that adopted the current general order.

Procedural Background

On December 27, 2002, Greenlining/LIF filed a petition to request the Commission issue an order instituting a rulemaking to amend GO 77-K and to adopt a regulation requiring all regulated utilities and their holding companies to annually disclose their diversity, executive compensation and philanthropic contributions. In addition, the Chief Executive Officer (CEO) of each utility should be required to sign off on all disclosed data to ensure that it is accurate. Greenlining/LIF filed its petition pursuant to Pub. Util. Code § 1708.5, which permits interested parties to petition the Commission to adopt, amend or repeal a regulation.

Responses were filed on January 27, 2003, by Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company and Southern California Gas Company (SDG&E/SCG), SBC California (SBC), and Verizon California Inc. (Verizon). Greenlining/LIF filed a Reply to the Responses on February 6, 2003.

Summary of Petition

Greenlining/LIF asserts that the disclosure of a utility's philanthropy is important because philanthropy functions as a significant way in which a utility serves low-income, minority, recent immigrant, limited-English speaking and other underserved communities. Greenlining/LIF states that the information should separate out the totals for each group, including each major minority group including, but not limited to: Black, Asian or Asian American, Latino and Native American.

According to Greenlining/LIF, the Commission should also require each utility to disclose its pre-tax income as well as the total compensation of its top 10 executive officers and the compensation of the top five executive officers of its holding company, to put in perspective and compare these amounts with the utility's philanthropy. Greenlining/LIF states that the two major vehicles through which utilities currently disclose executive compensation do not provide the public or the Commission with useful information. For example, Greenlining/LIF points to the annual 10-K filing required by the Securities and Exchange Commission (SEC), stating that the value of the compensation packages awarded a company's executives in the 10-K is indecipherable to the public, or even to the executives themselves.¹ Greenlining/LIF asserts that the information required by the Commission should differ from the information filed at the SEC in that each utility should be required to present the data in a form that permits a layperson to determine the total value of the officer's compensation package.

In addition to the SEC's requirements, which apply to all major corporations, GO 77-K also requires each public utility having gross annual operating revenues of \$1 billion or more to annually file a 77-K report listing all employee salaries and bonuses that totaled over \$75,000 for the prior year. According to Greenlining/LIF this is an antiquated form, given that the most significant form of compensation—stock options, which can represent 75% or

¹ Greenlining/LIF gives the example of cross-examining SDG&E's former CEO and Sempra's current CEO, Stephen Blum, regarding executive compensation in A.96-10-038, pointing out that he could not summarize the value of his own executive compensation package.

more of employees' compensation—is not included. Greenlining/LIF also points out that in addition to containing significant deficiencies, the 77-K form is also unnecessarily cumbersome in that it requires the reporting information on lower and middle management employees earning less than \$200,000 annually. Greenlining/LIF recommends that GO 77-K be modified to raise the ceiling for reporting.

Finally, Greenlining/LIF states that given the lowered penetration rates that currently exist in communities of color, it is important for a utility to have a diverse and experienced management group. Therefore, without including their names, each utility should be required to disclose the ethnicity and gender of its upper and middle management—specifically, the utility's top 100, 500 and 1,000 employees (using salary as a basis of such ranking). Greenlining/LIF recommends the following modifications to GO 77-K for each public utility having gross annual operating revenues of \$1 billion or more to report the following information:

1. Without including names, the total compensation of each employee who received total compensation valued at \$200,000 or more in the prior year (including, but not limited to salary, bonuses, stock options, performance shares, retention incentive stock units and cash, executive retirement benefits, executive survivor benefits and any and all other compensation);
2. Without including names, but including titles, the total compensation of the top five officers, using salary for the basis of such ranking regardless of the value of the compensation (including but not limited to salary, bonuses, stock options, performance shares, retention incentive stock units and cash, executive retirement benefits, executive survivor benefits and any and all other compensation); and

3. Without including names, the gender, race and ethnicity of each employee whose compensation is reported in order to enable the Commission to compile data on the racial diversity of the top management at each major utility.

Greenlining/LIF indicates that the amendments will involve no additional work for each utility, and that in all likelihood, it will significantly decrease the amount of information each utility currently reports.

Parties' Comments

PG&E, SDG&E/SCG, Verizon, and SCE all assert that the additional reporting requirements are unnecessary and unjustified and, therefore, the Petition should be denied. The parties assert that the executive compensation Greenlining/LIF is seeking is already made public through other sources. The parties assert that GO 77-K already requires utilities to disclose compensation of employees, including all executive officers, earning in excess of \$75,000 per year. Also, the information Greenlining/LIF seeks is included in the 10-K report filed annually with the Securities and Exchange Commission (SEC) as well as their annual proxy statements submitted to the SEC.² According to SCE, the proxy statement covers all aspects of the executive compensation of the five highest paid officers of the utility and the five highest paid officers of the holding company. And PG&E adds that proxy statements are publicly and readily available on the SEC's website.

While Greenlining/LIF contends that the SEC 10-K filings are "indecipherable," SCE asserts that they follow all the requirements for SEC

² SCE appended its Joint Notice of Annual Meetings of Shareholders and Joint Proxy Statement, dated May 14, 2002, to its filed comments.

filings. The disclosure requirements set forth in Regulation SK, Item 402 and promulgated under the Securities Act of 1933 ensure that the information is filed in a consistent and comprehensive manner and is understandable to shareholders and investors. SCE adds that Item 402 describes in detail not only the executive compensation information that is required to be disclosed, but also the form in which that information is to be presented in SEC filings by companies throughout the United States. PG&E describes the executive compensation information reported in PG&E's proxy statements as clear and detailed. The proxy statements include the salary, bonus, other annual compensation, restricted stock awards, stock options (including number of shares granted and exercised, value realized, and value unexercised), and long-term incentive awards for each of the named executives for the current and past two years. It is unclear to PG&E how Greenlining/LIF would propose to improve the presentation of the data.

Similarly, Greenlining/LIF argues that GO 77-K should be revised to include "the total compensation of each employee who received total compensation valued at \$200,000 or more in the prior year." Under GO 77-K as currently drafted, PG&E states that it already reports the salary, bonuses, stock options and other forms of compensation for all employees with base salaries of \$75,000 or more. It is not clear to PG&E what additional information the utilities would be required to document in their GO 77-K reports under Greenlining/LIF's proposal.

SDG&E claims that the relief requested is beyond the Commission's jurisdiction, since Sempra Energy's holding company and unregulated subsidiaries are outside the CPUC's purview. SDG&E suggests that Greenlining/LIF address its request for additional information regarding such

entities to state and federal regulatory agencies including the SEC and the Federal Energy Regulatory Commission (FERC), not the CPUC. SCE adds that under Public Utilities Code § 314, holding company information must be disclosed only when it involves a transaction between a utility and a holding company. Greenlining/LIF's proposal does not involve a transaction between the utility and the holding company, and therefore, petitioners, have not provided an adequate basis for disclosure of holding company executive compensation.

According to SDG&E, Greenlining/LIF's concern that companies can hide large amounts of compensation under the guise of stock options is completely unfounded. Greenlining/LIF can review Form 10-K to ascertain the number of shares a company awards its employees, and other details concerning stock option activity for the reporting year.

Various parties also point to the Commission's stated purpose for GO 77-K, which is to provide the Commission with information useful in setting utilities' rates. The parties contend that much of the information requested by Greenlining/LIF pertains to the diversity of the utilities' workforce and their below-the-line charitable contributions, issues that have no bearing on the Commission's establishment of just and reasonable utility rates. PG&E adds that to the extent Greenlining/LIF believes this type of information is relevant to the establishment of utility rates, however, it has the opportunity to intervene in each utility's general rate case (GRC) to obtain such information as part of the discovery process.

SCE notes that as part of each utility's regular GRC proceeding, the Office of Ratepayer Advocates and the utilities jointly sponsor a thorough compensation study whose data are part of the record of the GRC. Also, in its

current rate case, SCE provided Greenlining/LIF with its total cash philanthropic contributions to low-income, minority, ethnic and inner-city groups for the years 1999, 2000 and 2001. Similarly, SCE provided information regarding diversity of its top 1,000 employees.³ SCE states that Greenlining/LIF has not explained why the information SCE provided is insufficient or inadequate. Also, SCE asserts that philanthropic contributions and diversity of the workforce have no relevance to ratesetting, since philanthropic contributions made by a utility are not recovered in customers' rates, but rather are paid with shareholder equity.

PG&E states that Greenlining/LIF's requests are vaguely worded and confusing. For example, Greenlining/LIF uses the term "stock options" in its description of total compensation. But the term "stock options" is susceptible to several interpretations, including the "Black-Scholes" value of the stock options (which is currently reported in PG&E's annual proxy statements) and the value of stock options actually exercised during the year in question (which is currently reported in PG&E's GO 77-K reports).

Similarly, Greenlining/LIF refers to the "top ten executive officers" of the utility. However, PG&E's executives include its president and CEO, five senior vice presidents, 18 vice presidents, and a corporate secretary. It is unclear which of these executives would constitute the "top ten" for Greenlining/LIF's purposes.

PG&E also states that the information about philanthropic donations that Greenlining/LIF requests could be misconstrued. Greenlining/LIF requests that utilities disclose "total cash philanthropic contributions in California which the

³ Both items are appended to SCE's comments.

utility contends was specifically directed to low-income, minority, ethnic or inner city groups or services.” PG&E points out that it provides grants to a variety of nonprofit organizations and governments in the communities it serves, but to provide an accurate picture of PG&E’s corporate contributions to low-income, minority, ethnic or inner city groups or services, PG&E would have to go through each of its grants and research the demographic make-up of the clients served by the various grantees, and in many cases, there is overlap among categories.

SDG&E/SCG adds that a company’s decisions about the organizations it chooses to support with contributions of shareholder money are not subject to Commission oversight. SDG&E/SCG finds unworkable Greenlining/LIF’s request that certain contributions be identified as benefiting one minority, ethnic or inner city group. Frequently a community organization with a specific ethnic focus will sponsor programs that benefit more than one minority group. For example, Sempra gives money to the Urban League—a historically African American organization—in support of a program benefiting predominately Latino students in southeast San Diego. Sempra questions how that grant should be classified.

SBC points out that employee salary levels have not formed the basis for increases in SBC’s rates since price cap regulation was adopted in 1989. According to Verizon, the Petition does not justify amending a general order applicable to virtually all types and sizes of utilities in order to obtain the information, especially since the information Greenlining/LIF seeks is available from a variety of other sources.

SBC points out that GO 77-K already requires utilities to annually report dues, donations, subscriptions and contributions. And SCE adds that it

provided voluntarily information regarding its diversity and philanthropic contributions in its currently ongoing GRC. PG&E disagrees with Greenlining/LIF's underlying claim that philanthropy and diversity constitute part of the "service" that utilities offer and that the Commission regulates. PG&E is in the business of providing natural gas and electric utility service to its customers, and it is this service that the Commission regulates. Contrary to Greenlining/LIF's claim, PG&E is not in the business of providing philanthropic or community development services, nor is the Commission authorized to regulate PG&E's provision of such services.

The parties all agree with Greenlining/LIF that GO 77-K could be improved by increasing the threshold reporting level from \$75,000 to \$200,000. And Verizon suggests that the limit should be indexed annually according to a specified inflation factor so as to reduce the need for future changes to the General Order.

Discussion

We agree with parties that the information on employee compensation that Greenlining/LIF requests is currently available from a variety of sources: GO 77-K filings, the annual SEC 10-K filings and proxy statements, as well as from discovery in the course of Commission proceedings. We have reviewed the 10-K filing and proxy statement appended to SCE's comments, and do not find them incomprehensible, as Greenlining/LIF suggests. Also, the proxy statement appended to SCE's comments contains detailed data on stock options, which seems to be of particular concern to Greenlining/LIF. Since the information is available from other sources, it does not make sense to open a proceeding to amend GO 77-K to make the information available through that reporting mechanism.

Also, it does not make sense to amend a General Order to require reporting for all utilities, when some utilities, such as the larger telecommunications carriers, are under incentive regulation. GO 77-K's purpose is providing information relevant to ratesetting, and the Commission does not need that information to set rates for the telecommunications carriers under incentive regulation.

As parties point out, GO 77-K has existed in its present form since 1986. GO 77-K requires each utility meeting a certain operating revenue threshold to file, on or before March 31 of each year, a statement showing certain information for the preceding calendar year. This information includes the names, titles and duties of all officers or employees who receive compensation at or above a specified limit, the amount of compensation received by each, the amount of the expense account or other monies directly or indirectly paid to each such officer, as well as payments to attorneys, dues, donations, subscriptions and contributions directly or indirectly paid by the public utility.

In D.96-07-052, the Commission describes in detail the purpose of GO 77-K and the reasoning behind the reporting requirements contained therein.

[T]he Commission recognizes a clear and direct relationship between the expenses claimed by a utility regulated by the Commission and the rates which are allowed to be charged for the provision of utility services. In the context of GO 77-K, amounts paid by a utility to its officers and employees is a legitimate area of inquiry in the rate-setting process in that the Commission must ascertain whether salaries and compensation paid by the utility are excessive, out of line with prevailing standards, or represent some form of cross-subsidization in which the ratepayers are burdened with costs unrelated to the services for which they are charged.⁴

⁴ D.96-07-052 [67 CPUC2d 80, 80].

According to the Commission's order cited above, GO 77-K is intended to be used in the rate-setting process. Information provided pursuant to GO 77-K allows the Commission to determine whether salaries paid by a particular utility are excessive, or if there is some sort of cross-subsidization which results in ratepayers paying costs unrelated to the services they purchase.

Greenlining/LIF's proposed rulemaking goes beyond the current reporting requirements of GO 77-K to include information on below-the-line philanthropic contributions. As shown above, the Commission's stated purpose in GO 77-K is for assist the Commission in setting utilities' rates. However, information on a company's below-the-line charitable contributions is not used to set a utility's rates so that information should not be included in the GO 77-K reporting system.

Greenlining/LIF also asks that GO 77-K reporting system include information on executive diversity. We deny this request because we prefer to look at the issue of executive diversity in a broader context than Greenlining/LIF requests. Issues relating to employee diversity have surfaced in three major energy utility proceedings, and we believe the Commission and the public would benefit from engaging in a comprehensive, cross-industry discussion of the issues. Therefore, on July 22, 2003, the Commission is conducting a day-long Full Panel Hearing to discuss ideas on how to further develop the women, minority and disabled veteran's business enterprise program and how to advance utility workforce diversity. Several panels of discussants will be asked to present their perspectives. From this exchange, the Commission will evaluate the status of utility procurement and utility employment diversity, and determine how best to address those issues.

There is agreement among all parties that the compensation levels that trigger reporting under GO 77-K should be increased to \$200,000. However, such a relatively minor change does not necessitate initiating a rulemaking proceeding. Instead, the Commission can modify the resolution that adopted the current general order—Resolution No. F-615—to accomplish that straightforward and sensible update. If parties want to propose increasing the compensation levels for the various size utilities covered by the GO, they should file a petition to modify Resolution No. F-615. While we generally frown on petitions to modify filed so long after the fact, we will allow it in this case. Verizon proposes that the limit should be indexed annually according to a specified inflation factor so as to reduce the need for future change to the GO. It makes sense to set up an automatic process for future changes, and we will entertain a specific proposal for annual indexing based on an inflation factor as part of any Petition to Modify Resolution F-615.

Section 1708.5(c) provides as follows:

If the Commission denies a petition, the order or resolution of the commission shall include a statement of the reasons of the Commission for that denial.

We deny Greenlining/LIF's petition for rulemaking because it duplicates information on employee compensation that is available from other sources, and the General Order already requires utilities to disclose compensation of employees. Also, information on a company's below-the-line charitable contributions is not used to set a utility's rates so that information should not be included in the GO 77-K reporting system.

We deny Greenlining/LIF's request to amend GO 77-K to include information on executive diversity because we intend to look at the issue of employee diversity, but in a broader context than Greenlining/LIF requests.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Karen Jones is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Information on employee compensation is currently available from a variety of sources: GO 77-K, SEC 10-K filings and proxy statements, as well as from discovery in a Commission proceeding.
2. GO 77-K requires reporting by virtually all utilities.
3. The large telecommunications carriers are regulated under an incentive regulation program.

Conclusions of Law

1. Since the information on employee compensation is available from a variety of sources, there is no need to amend GO 77-K to make the information available through that reporting mechanism.
2. GO 77-K's established purpose is to provide the Commission with information relevant to rate setting.
3. Information on below-the-line philanthropic contributions is not used to set a utility's rates.

O R D E R

IT IS ORDERED that:

1. The Petition of the Greenlining Institute/Latino Issues Forum to institute a rulemaking to amend General Order Number 77-K and to adopt a regulation requiring regulated utilities and their holding companies to annually disclose their diversity, executive compensation and philanthropic contributions is hereby denied.

2. Any interested party is authorized to file a Petition to Modify Resolution No. F-615 for the purpose of updating the compensation levels that trigger reporting, and to establish a process making future updates automatically according to a specified inflation factor.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.